Goh Beng Li @ Angeline bt Umpu v Goh Beng Chu @ Mariana bt Umpu

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO S-02(NCVC)(W)-253–02 OF 2017
DAVID WONG, HAMID SULTAN AND KAMARDIN HASHIM JJCA
17 JULY 2018

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Civil Procedure — Res judicata — Issue estoppel — Appellant sued respondent for order that High Court had no jurisdiction to grant respondent letters of administration over parents' estates — Appellant contended only native court had jurisdiction to deal with estate matters of natives of Sabah — Appellant, respondent and other siblings previously involved in contested legal proceedings over management of their parents' estates — Whether issue of jurisdiction of High Court should have been raised in those proceedings — Whether appellant estopped from raising issue now — Whether law did not expressly oust jurisdiction of High Court and state that only native courts had exclusive jurisdiction to deal with matters of estates of natives of Sabah — Whether ss 4 and 20 of the Administration of Native and Small Estates Ordinance clearly showed that both native courts and High Court had concurrent jurisdiction over such matters

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The appellant and the respondent were among seven children of a couple who died intestate within a year of each other. The couple left estates comprising lands in various districts of Sabah, some country leases, and others native-titled, and unit trusts. Following the deaths of the couple, the children were embroiled in disputes amongst themselves over the management of their parents' estates. They were involved in four separate legal proceedings, each of which finally ended at the Court of Appeal ('the COA'). In chronological order, these were: (a) a successful application by one of the children, William, to the Kota Kinabalu native court for an order to administer/distribute the estates, which order was quashed by the High Court on the application of the appellant, respondent and three other siblings on the ground that they were not heard before the order was made. William's appeal to the COA against the High Court's decision was struck out; (b) petitions by the respondent to the High Court for letters of administration. The petitions were contested by William and two other siblings. The High Court resolved the dispute by making all four parties to the dispute as joint administrators of the estates. On appeal, the COA varied the order and made the respondent the sole administrator; (c) the respondent's application as administrator to the High Court for directions over the manner in which the proceeds of sale of one of the properties of the estates was to be distributed. These proceedings were again contested by the other siblings and finally determined by the COA; and (d) the respondent's successful application to the High Court for an order that William refund monies

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belonging to the estates which had been paid out to him. William's appeal against that decision was struck out by the COA. Following these four legal proceedings, the appellant filed a fifth action against the respondent which was the subject of the instant appeal. In the application, the appellant sought an order that the letters of administration granted to the respondent were invalid on the ground that the High Court had no jurisdiction to grant them as only the Native Court had jurisdiction to deal with estate matters concerning natives of Sabah. The High Court struck out the appellant's suit under O 18 r 19 and/or O 92 r 4 of the Rules of Court 2012 on the ground that: (i) her attempt to re-litigate/re-agitate issues that had, or should have been, finally decided in the previous proceedings was precluded by res judicata; and (ii) there was no express law that ousted the jurisdiction of the High Court to deal with matters concerning the estates of natives of Sabah.

Held, unanimously dismissing the appeal:

(1) The High Court rightly struck out the appellant's claim as it was plain and obvious that it was bound to fail at trial. This was a case where the concept of res judicata applied with full force (see para 30).

(2) The four previous legal proceedings between the appellant, respondent and their siblings related to only one subject matter and that was the estates of their parents. In her instant action, the appellant was essentially trying to set aside all the proceedings which had given the respondent the right to administer the estates of her parents. Not only was the appellant aware of those four legal suits, she was very much a part of them. The issue of jurisdiction currently raised by the appellant should and could have been raised in the previous suits. To allow the appellant to raise the issue now was not only unjust but out-right unfair (see para 23).

(3) There was no express provision in law that said that only the native courts had the exclusive jurisdiction to deal with matters concerning the estates of natives of Sabah. Both ss 4 and 20 of the Administration of Native and Small Estates Ordinance showed conclusively that the native court and the High Court had concurrent jurisdiction over the administration of native estates. The High Court judge was right in saying that the Penampang native court had rightly declined jurisdiction to grant the Jadual Tiga as the High Court had already begun to exercise jurisdiction based on the petitions for letters of administration filed by the respondent (see paras 19 & 24–26).

(4) To mount a collateral attack on a final judgment of a superior court there had to be shown a clear contravention of an express statutory prohibition. There was no such clear contravention here as the appellant was at all times aware of the court proceedings and had only taken this action when the decision of the High Court was not in her favour (see para 29).

[Bahasa Malaysia summary

Perayu dan responden adalah salah seorang daripada tujuh anak sepasang suami isteri yang telah meninggal tanpa wasiat dalam tempoh setahun antara satu sama lain. Pasangan tersebut telah meninggalkan harta pusaka yang merangkumi tanah-tanah di sekitar daerah di Sabah, beberapa pajakan negara, dan tanah tempatan lain, dan unit amanah. Lanjutan daripada kematian pasangan tersebut, anak-anak telah terlibat dalam pertikaian antara mereka untuk pengurusan harta pusaka iba bapa mereka. Mereka telah terlibat di dalam empat prosiding perundangan, yang mana setiap satunya berakhir di Mahkamah Rayuan ('MR'). Menurut turutan kronologi, ianya adalah: (a) permohonan oleh salah seorang anak, Wiliam, yang telah dibenarkan oleh Mahkamah Adat Kota Kinabalu untuk suatu perintah untuk mentadbir/mengagihkan harta pusaka tersebut, yang mana telah dibatalkan oleh Mahkamah Tinggi oleh permohonan yang dibuat oleh perayu, responden dan tiga adik beradik yang lain atas alasan bahawa mereka tidak pernah dipanggil apabila perintah tersebut dibuat. Rayuan oleh William ke Mahkamah Rayuan telah dibatalkan; (b) petisyen oleh responden ke Mahkamah Tinggi untuk suratan mentadbir. Petisyen tersebut telah dipertikaikan oleh William dan dua adik beradik lain. Mahkamah Tinggi telah menyelesaikan pertikaian tersebut dengan memerintahkan keempat-empat pihak dalam pertikaian sebagai pentadbir bersama harta pusaka tersebut. Dalam rayuan pula, MR telah mengubah perintah tersebut dan menjadikan responden sebagai pentadbir tunggal; (c) permohonan responden sebagai pentadbir kepada Mahkamah Tinggi untuk suatu arahan bagi cara hasil daripada jualan hartanah bagi harta pusaka tersebut untuk diagihkan. Prosiding ini sekali lagi disangkal oleh adik beradik yang lain dan akhirnya diputuskan oleh MR; dan (d) permohonan responden ke Mahkamah Tinggi untuk suatu perintah supaya William memulangkan kembali duit harta pusaka yang telah dibayar kepada beliau telah dibenarkan. Rayuan William terhadap keputusan tersebut telah ditolak oleh MR. Lanjutan daripada empat prosiding perundangan ini, perayu telah memfailkan tindakan yang kelima terhadap responden yang mana adalah subjek kepada rayuan yang terkini. Dalam permohonan tersebut, perayu telah memohon suatu surat mentadbir yang diberikan kepada responden adalah tidak sah atas alasan bahawa Mahkamah Tinggi tidak mempunyai bidang kuasa untuk membenarkannya kerana hanya Mahkamah Adat sahaja yang mempunyai bidang kuasa untuk mendengar perkara-perkara berkaitan harta pusaka di Sabah. Mahkamah telah membatalkan tindakan perayu di bawah A 18 k 19 dan/atau A 92 k 4 Kaedah-Kaedah Mahkamah 2012 atas alasan bahawa: (i) cubaan beliau untuk memulakan kembali/mengutarakan kembali isu-isu yang telah, atau seharusnya telah, diputuskan di prosiding sebelum ini ada dihalang oleh res judicata; dan (ii) tiada undang-undang yang nyata yang menghalang Mahkamah Tinggi daripada mendengar perkara-perkara berkaitan harta pusaka di Sabah.

Diputuskan, rayuan ditolak:

(1) Mahkamah Tinggi telah tepat dalam membatalkan tuntutan perayu kerana ianya adalah ringkas dan jelas bahawa ianya akan gagal di perbicaraan. Ini adalah kes yang mana prinsip res judicata terpakai sepenuhnya (lihat perenggan 30).

(2) Keempat-empat prosiding perundangan yang terdahulu di antara perayu, responden dan adik beradik mereka adalah hanya berkait dengan satu perkara pokok dan ianya adalah harta pusaka ibu bapa mereka. Di dalam tindakan beliau, perayu telah secara dasarnya cuba untuk menolak kesemua prosiding-prosiding yang telah membenarkan responden segala hak sebagai pentadbir harta pusaka ibu bapa beliau. Bukan sahaja perayu sedia maklum berkenaan keempat-empat tuntutan tersebut, beliau juga adalah sebahagian daripadanya. Isu bidang kuasa yang dibangkitkan oleh perayu haruslah dan boleh dibangkitkan pada tindakan terdahulu. Untuk membenarkan perayu membangkitkan isu pada peringkat ini bukan sahaja tidak adil malah berat sebelah. (lihat perenggan 23).

(3) Tiada peruntukan yang nyata dalam undang-undang yang menyatakan bahawa hanya Mahkamah Adat mempunyai bidang kuasa ekslusif untuk mendengar perkara-perkara berkaitan dengan harta pusaka di Sabah. Kedua-dua ss 4 dan 20 Ordinan Pentadbiran Tempatan dan Harta Pusaka Kecil menyatakan bahawa secara konklusifnya Mahkamah Adat dan Mahkamah Tinggi mempunyai bidang kuasa bersesama untuk pentadbiran harta pusaka. Hakim Mahkamah Tinggi telah tepat dalam menyatakan bahawa Mahkamah Adat Penampang telah tepat ketika menolak bidang kuasa untuk memberikan Jadual Tiga kerana Mahkamah Tinggi telah memulakan bidang kuasanya berdasarkan kepada petisyen suratan pentadbiran yang difailkan oleh responden. (lihat perenggan 19 & 24–26).

(4) Untuk memulakan serangan kolateral ke atas penghakiman akhir oleh Mahkamah Agung perlu menunjukkan terdapat pelanggaran yang jelas terhadap larangan nyata perundangan. Tidak ada pelanggaran dilakukakan di sini kerana perayu pada setiap masa menyedari terdapat prosiding mahkamah dan hanya mengambil tindakan apabila keputusan tidak memihak kepada beliau (lihat perenggan 29).]

Notes

For cases on issue estoppel, see 2(4) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 8403–8432.

Cases referred to

Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd [1995] 3 MLJ 189; [1995] 3 CLJ 783, SC (refd)

CIMB Investment Bank Bhd (previously known as Commerce International

Merchant Bankers Bhd) v Metroplex Holdings Sdn Bhd [2014] 6 MLJ 779; [2014] 9 CLJ 1012, FC (refd)

Legislation referred to

Administration of Native and Small Estates Ordinance 1941 (Cap 1) ss 4, 20, Schedule 3
Rules of Court 2012 O 18 r 19(1)(b), (1)(d), O 92 r 4

Appeal from: Civil Suit No BKI-22NCvC-51/5 of 2015 (HC2) (High Court, Kota Kinabalu)

Peter Lee Kong Chung (Lee & Assoc) for the appellant.
David Fung (SK Pang & Co) for the respondent.

David Wong JCA (delivering judgment of the court):

INTRODUCTION

[1] This appeal relates to the decision of the High Court where the learned judge struck out the statement of claim of the plaintiff/appellant pursuant to O 18 r 19(1)(b) and (d) and O 92 r 4 of the Rules of Court 2012 and had allowed in part the counterclaim of the defendant/respondent.

[2] We had dismissed the appeal and as the appellant had since obtained leave to appeal to the Federal Court, we now give our reasons.

BACKGROUND FACTS

[3] The factual matrix of this case had been summarised by respective counsel and as they reflect an accurate description of background facts, we adopt them with the relevant and appropriate amendments.

[4] Wong Su Liu @ Wong Oi Chin and Robert Goh Wai Jen had died *intestate* within a year of each other in 2003 and 2004. They were the parents of the respondent and left behind seven children. Their estates comprised lands in various districts of Sabah, some country leases and others native titled, and unit trusts.

[5] Mr William bin Gohumpu ('William'), who is one of the seven children, on 5 July 2004 applied to the Kota Kinabalu ('KK') Native Court and obtained a Jadual Tiga for the estates of his parents (R/P 2(1) pp 92–105), which is an order of administration and/or distribution of the estates issued under the Administration of Native and Small Estates Ordinance 1941 (Cap 1).

[6] Premised on the ground that they were not heard in the KK Native Court before the grant of Jadual Tiga, the respondent, together with three other siblings which included the appellant filed a judicial review application under OMK 25–02 of 2008 to quash the KK Native Court's decision. The High Court on 15 January 2009 quashed by certiorari the decision of the KK Native Court, resulting in William appealing to the Court of Appeal. On 12 May 2012, the Court of Appeal struck out the appeal.

[7] Subsequent to the decision of the Court of Appeal, the Respondent applied to administer the aforesaid estates before the KK High Court in Petition No BKI-31–66 of 2010-II and Petition No BKI-31–65 of 2010-II which were contested by William and two other siblings, namely Michael bin Gohumpa (Michael) and Goh Beng Yen.

[8] The aforesaid objection was heard by the senior assistant registrar who, after hearing the parties on 8 October 2012, decided to grant letters of administration jointly to the respondent and William and the two siblings so that there would be four joint administrators.

[9] William, Michael and Goh Beng Yen were dissatisfied, and they appealed to the High Court judge where the learned judge on 7 November 2012 heard the appeal and dismissed the same.

[10] William and the two other siblings then appealed to the Court of Appeal and on 8 May 2013 the Court of Appeal allowed the appeal of three other siblings in the contested probate petitions not to be joint administrators with the respondent and instead appointed the respondent as the sole administrator. This varied the High Court order given 7 November 2012, and the respective grant of letters of administration by the High Court for the parents' estates issued by the High Court registry.

[11] By virtue of the High Court's and Court of Appeal's orders in the contested probate suits, the respondent became the administrator of the estate of her late father Robert Goh Wai Jen @ Goh Wai Heng and her late mother Wong Su Lin @ Wong Oi Chin pursuant to the letter of administration.

[12] In performing her duties as the administrator of the estates, the respondent took out an originating summons under BKI-24NCvC-23/4 of 2014 (HC2) to seek directions for the transfer of the Taman Delima property after its sale and for the application of the proceeds of sale to defray costs incurred in the administration of the estates with the balance to be distributed equally to the seven beneficiaries-siblings.

[13] This action was opposed by William, Michael, Goh Beng Yen @ Anna

and the appellant. After hearing full arguments, the High Court on 18 December 2014 rejected the arguments opposing the application and granted the orders sought. This decision resulted in an appeal by William, Michael and Goh Beng Yen @ Anna to the Court of Appeal. After hearing the parties, the Court of Appeal unanimously on 16 January 2016 dismissed the appeal with costs of RM10,000.

[14] Leave to appeal to the Federal Court under Civil Application No 08(f)-89–02 of 2016(S) was dismissed with costs on the 27 October 2016.

[15] The respondent also took out an Originating Summons BKI-24–7/1 of 2015 (HC1), as administrator of the estates to recover money which had belonged to the estates but was paid out to William. The subject-matter was the money from the ASNB and ASN unit trusts paid out to William.

[16] The High Court on 18 August 2015 decided in favour of the respondent in her capacity as the administrator of the estates and ordered the refund of the money to the estate for the benefit of all the seven beneficiaries-siblings rather than solely to William with costs. William then appealed to the Court of Appeal but on 16 March 2016 the same was struck out with costs.

[17] It is therefore, with the record of the above concluded and final judgments in the legal proceedings, all before the High Court and then the Court of Appeal (and one rejected for leave in the Federal Court), that the appellant wanted to re-litigate or re-agitate the subject-matter of the undoubted jurisdiction of the High Court to adjudicate on the estates.

[18] The appellant in this action had taken out suit to seek an order that the aforesaid letters of administration granted to the respondent are invalid on the ground that the High Court does not have jurisdiction to deal with estates matter relating to natives of Sabah.

HIGH COURT

[19] The learned judge's reasoning can be clearly discerned from this passage of his grounds of judgment:

> ... I bear in mind that the Native and Small Estates Ordinance (Cap 1 of 1941) (No 3 of 1953) though repealed by Act 127/72 but not yet in force gave jurisdiction to the Collector or the Assistant Collector of Land Revenue to hear estate matters whether it is native estate or small estate.
>
> In practice the distribution of a native estate is preceded by an application for a Jadual Tiga (Schedule 3) issued pursuant to the 1941 Ordinance even to date wherein an administrator/administratrix is appointed and subsequently for a

distribution. Sometimes an Order for distribution can be made by the Native Court immediately without the appointment of an administrator/administratrix.

By section 4 of the Ordinance if an application is made prior to the institution of proceedings under the Probate and Administration Ordinance the Native Court shall have exclusive jurisdiction to deal with the whole of the native estate.

Applying the above to our present case the Kota Kinabalu Native Court Jadual Tiga that was issued on 5 July 2004 but was set aside on 15 January 2009 vide Originating Motion K25–2 of 2008 and Court of Appeal on 17 May 2012 affirmed the High Court decision. Meanwhile application was made for letters of administration at the Kota Kinabalu High Court in Petition K-31–66 of 2010 and K31–65 of 2010.

On 8 May 2014 the Penampang Native Court declined to grant the Jadual Tiga as the High Court had already begun to exercise jurisdiction.

I am of the opinion that in declining jurisdiction, the Penampang Native Court is correct given ss 3 and 4 of the 1941 Ordinance. I cannot find anything in our law that oust the jurisdiction of the High Court expressly ie prohibiting any native from applying to the High Court of native estates.

And since the Native Court Penampang had declined jurisdiction for which I am of the opinion they are entitled to do so and since the High Court had quashed the order of the Native Court granting the Jadual Tiga earlier granted by the KK Native Court what is now left must be the order of the Court of Appeal and the order of the High Court.

I am bound by the decision of the Court of Appeal and I will not look into any ruling made by the High Court earlier as we are of concurrent jurisdiction.

I agree that this present suit commenced by the plaintiff is an attempt to re-litigate the issues already dealt with in Petition BKI-31–66 of 2010-II and Petition BKI-31–65 of 2010-II and OS BKI-24NCvC-23/4 of 2014.

OUR GROUNDS OF DECISION

[20] We can see that the learned judge's reasoning in striking out the appellant's statement of claim premised on the two grounds, namely, principle of res judicata and that there is no express law ousting the jurisdiction of the civil court in dealing with estates of natives in Sabah.

[21] In regard to the concept of res judicata, we are in full agreement with the learned judge. This concept is as stated by Supreme Court in *Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189 at p 200; [1995] 3 CLJ 783 at pp 793–794:

It is further necessary at this stage to understand the import of the words in the said famous statement, ie '... every point which properly belonged to the subject of litigation ...' which Somervell LJ explained in *Greenhalgh v Mallard* [1947] 2 All ER 255 at p 257 as follows:

... res judicata for this purpose is not confined to the issues which the court is

> actually asked to decide, but ... it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.

This explanation of Somervell LJ was also quoted with approval in the Privy Council in *Yat Tung Investment Co v Dae Heng Bank & Anor* [1975] AC 581; [1975] 2 WLR 690.

[22] We look at what happened here. As pointed out by learned counsel for the respondent, there were altogether four concluded legal proceedings in respect of the estates of the late parents between all the siblings including the appellant. The four suits were as follows:

(a) judicial review application taken out by the respondent with three other siblings including the appellant which ended at the Court of Appeal;

(b) the two petitions by the respondent for administration of the estates of the parents which was contested by three siblings. This legal tussle also ended at the Court of Appeal varying the orders of the High Court;

(c) the respondent's application to seek direction in respect of the proceeds of sale of Taman Delima property to distribute the same equally among the seven siblings was objected by the appellant and two other siblings. Again, this dispute ended in Court of Appeal with leave to appeal to the Federal Court refused; and

(d) the respondent's legal proceedings to recover from one of the siblings for money taken out from the estates. This dispute also ended in the Court of Appeal and in favour of the respondent.

[23] It was crystal clear to us that all the four legal proceedings related to only one subject matter and that is the estates of the parents. The appellant in her action in essence was to set aside all the proceedings which had given the respondent the right to administer the parents' estate. Not only was the appellant aware of these four legal suits, she was very part of them. This issue of jurisdiction should and could have been raised in the four legal suits. To allow the appellant to raise the issue of jurisdiction in our view was not only unjust but right out unfair.

[24] In any event, we did not see any express provision in law that only the Native Courts have the exclusive jurisdiction to deal with estates of Natives in Sabah. On contrary both ss 4 and 20 of the Administration of Native and Small Estates Ordinance provide otherwise in crystal clear languages:

> Section 4
>
> If an application under section 3 is made prior to the institution of proceedings under the Probate and Administration Ordinance the Collector of the District

where the greater part in value of an estate is situated shall, subject to the provisions of this Ordinance, have exclusive jurisdiction to deal with the whole estate wherever situated in the colony:

Provided that the Commissioner of Lands may order any application under this Ordinance to be heard by the Collector of any other district whenever it is made to appear that such an order is expedient for the ends of justice.

Section 20:

When an application under section 3, other than one mentioned in section 21 relates to a native estate the Collector shall refer the application to the native Court unless in his opinion the estate is of such magnitude that it should be dealt with under the Probate and Administration Ordinance in which event the Collector shall send the record of the application and his finding to the High Court.

[25] The aforesaid sections show conclusively that the Native Court and the High Court have concurrent jurisdictions in administration of native estates. If there is to be an exclusive jurisdiction of the Native Court, clear words must be used, and this can be done by simply saying that 'the Native Court shall exclusive jurisdiction in dealing with all administration of estates of natives in Sabah' or such similar words in both the Administration of Native and Small Estates Ordinance and Probate and Administration Ordinance. The learned judge was right in saying that there is no express prohibition in law giving such exclusivity to the Native Court.

[26] The learned judge in our view was also right in saying that the Native Court had rightly declined jurisdiction to hear the matter and direct that it be heard in the High Court. He had pointed out that the Kota Kinabalu Native Court Jadual Tiga issued on 5 July 2009 had been set aside by the High Court and later confirmed by the Court of Appeal on 17 May 2012. Application by way of petitions then was made in 2010 after the High Court decision and in 2014 that is after the Court of Appeal's decision confirming the High Court decision of setting aside the Jadual Tiga, the Penampang Native Court declined jurisdiction on the premise that proceedings had begun in the High Court via the petitions as provided for in aforesaid s 4.

[27] We have read the submission of the appellant's counsel on this issue which, with respect, did not deal with the aforesaid provisions.

[28] Further we agreed with submission of learned counsel for the respondent that a collateral attack on a final judgment of a superior court, there must be shown a clear contravention of an express statutory prohibition. The Federal Court in *CIMB Investment Bank Bhd (previously known as Commerce International Merchant Bankers Bhd) v Metroplex Holdings Sdn Bhd* [2014] 6 MLJ 779; [2014] 9 CLJ 1012 had this to say:

> ... Really, in truth, the 'two strong grounds to impugn the charge' only panned out to no more than an alleged breach of cl 18(G) of the GFA, which, even if true, was not a contravention that defied an express statutory prohibition, which meant that the conditions of *Badiaddin* for a collateral action were not met and that the Respondent was therefore barred by the doctrine of res judicata to bring the action below to attack the order of sale.

[29] There was no such clear contravention here as we have pointed earlier that appellant was at all time aware of the court proceedings and had only taken this action when the decision of the High Court was not in her favour.

CONCLUSION

[30] We were fully aware of the trite principle of striking out claims and suffice for us to say that courts can only exercise this power to strike out when it is plain and obvious that the claim is bound to fail at trial. In our view, this was such a case where the concept of res judicata can be applied with full force.

[31] Accordingly, we dismissed the appeal with no order as to costs. We also ordered that the deposit be refunded to the appellant.

The appeal unanimously dismissed.

Reported by Ashok Kumar